

OFFICE OF SPECIAL MASTERS

Filed: June 3, 2005

ESME JOHNSTON BAGLIO, and *
MICHAEL BAGLIO, as legal *
representatives of EVA MARIE BAGLIO, *

Petitioners, *

No. 03-1803V

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Mindy M. Roth, Glen Rock, New Jersey, for Petitioners.

Heather L. Pearlman, United States Department of Justice, Washington, D.C., for Respondent.

RULING ON ONSET OF SYMPTOMS¹

SWEENEY, Special Master

On July 31, 2003, Esme Johnston Baglio and Michael Baglio, as legal representatives of their daughter Eva Marie Baglio (“Eva”), filed a petition for compensation under the National Childhood Vaccine Injury Act (“Vaccine Act”). 42 U.S.C. § 300aa-1 to -34 (2000 & Supp. II 2003). The petitioners allege that Eva received a measles, mumps, and rubella (“MMR”)² vaccination on August 11, 2000, and contracted the Table injury of thrombocytopenic purpura³ as

¹ The court encourages the parties to review Vaccine Rule 18, which affords each party 14 days to object to disclosure of (1) trade secret or commercial or financial information that is privileged or confidential or (2) medical information that would constitute “a clearly unwarranted invasion of privacy.”

² The MMR vaccine is “a combination of live attenuated measles, mumps, and rubella viruses, administered subcutaneously for simultaneous immunization against measles, mumps, and rubella.” Dorland’s Illustrated Medical Dictionary, 1999 (30th ed. 2003).

³ Thrombocytopenic purpura is defined in the Qualifications and Aids to Interpretation (“QAI”) of the Vaccine Injury Table as “a serum platelet count less than 50,000/mm³.” 42 C.F.R. § 100.3(b)(7). The QAI further explains that the Vaccine Injury Table definition of

a result of that vaccination. Subsequent to the filing of the petition, respondent's counsel averred in respondent's Rule 4(b) Report that an onset hearing would be appropriate to determine when Eva's symptoms began. The court convened such a hearing, and finds that the onset of Eva's thrombocytopenic purpura occurred between nine and fifteen days after her MMR vaccination on August 11, 2000.

FACTUAL BACKGROUND

The Petition

Petitioners allege that Eva was a normal, healthy child until she received an MMR vaccination on August 11, 2000.⁴ Pet. at 2. Within nine days of the vaccination, Eva began to run a fever and she became restless and irritable. Id. Then, within fifteen days of the vaccination, petitioners state that Eva experienced bruising and that petechiae⁵ erupted all over Eva's body. Id. Eva was eventually diagnosed with immune thrombocytopenic purpura ("ITP"),⁶ which petitioners allege was caused by the August 11, 2000 MMR vaccination. Id. at 1, 4. At the time the petition was filed, Eva continued to suffer from chronic ITP. Id. at 7.

thrombocytopenic purpura does not include thrombocytopenia due to hypersplenism, autoimmune disorders, myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia, or hemolytic uremic syndrome; or thrombocytopenia associated with disseminated intravascular coagulation. Id. The definition also does not include immune/idiopathic thrombocytopenic purpura mediated by viral or fungal infections, toxins, or drugs. Id. An antecedent viral infection does not need to be confirmed by blood tests. Id. If a bone marrow examination is performed, it must reveal normal marrow with a normal or increased number of megakaryocytes. Id.

⁴ All references to the petition shall be designated herein as "Pet. at ____." All references to the pertinent Petitioners' Exhibit shall be designated herein as "Pet. Ex. Vol. __, pt. __ at ____" or "Pet. Ex. Vol. __ at __," as appropriate.

⁵ Petechiae are "pinpoint, nonraised, perfectly round, purplish red spot[s] caused by intradermal or submucous hemorrhage." Dorland's Illustrated Medical Dictionary, supra note 2, at 1411.

⁶ ITP "is a clinical syndrome in which a decreased number of circulating platelets (thrombocytopenia) manifests as a bleeding tendency, easy bruising (purpura), or extravasation of blood from capillaries into skin and mucous membranes (petechiae)." S. Gerald Sandler, M.D., Immune Thrombocytopenic Purpura, at <http://www.emedicine.com/med/topic1151.htm> (last updated Apr. 6, 2004).

The Medical Records

The medical records submitted by petitioners provide the following details. Eva was born on April 6, 1999, at Chilton Memorial Hospital in Wayne, New Jersey. Pet. Ex. Vol. I, pt. 1 at 1. Ms. Baglio's pregnancy was uncomplicated and Eva's birth was uneventful. Pet. Ex. Vol. I, pts. 2-4.

In the first sixteen months of her life, Eva had regular visits with her pediatrician and was consistently labeled a "well child." Pet. Ex. Vol. I, pt. 5 at 4-7. Additionally, Eva did not experience a vaccine reaction during her first sixteen months of life. Id. At a well-child visit on April 19, 2000, Eva's pediatrician, Niles Jariwala, M.D., prescribed certain blood tests, including a complete blood count ("CBC")⁷ and lead test. Id. at 5.

On August 11, 2000, Eva was again declared a well child by Dr. Jariwala. Id. at 4. At this visit, Eva received her first MMR vaccination. Id. at 4, 10.

Eva next returned to her pediatrician's office on November 7, 2000. Id. at 4. Eva saw Dr. Jariwala's colleague, Masoud Almasi, M.D.,⁸ who declared Eva to be a well child and again recommended CBC, differential blood count,⁹ and lead tests.¹⁰ Id. Eva saw Dr. Almasi again on November 16, 2000; the complaints were fever and pulling her ear. Id. at 3. But see id.

⁷ A CBC is "a blood count that includes separate counts for red and white blood cells." Merriam-Webster, Inc., MedlinePlus: Medical Dictionary, at <http://www.nlm.nih.gov/medlineplus/mplusdictionary.html> (last visited May 4, 2005).

⁸ Dr. Almasi's last name is misspelled throughout the record as Amassi or Almassi. The correct spelling was ascertained from the website of the New Jersey State Board of Medical Examiners.

⁹ A differential blood count is "a blood count which includes separate counts for each kind of white blood cell." Merriam-Webster, Inc., MedlinePlus: Medical Dictionary, at <http://www.nlm.nih.gov/medlineplus/mplusdictionary.html> (last visited May 4, 2005).

¹⁰ In petitioners' posthearing brief, counsel contends that Dr. Jariwala's transcription of the handwritten record of this visit contains the comment "Mommy had offered no complaints" but that the actual handwritten notes do not contain this comment. See Petitioners' Post Trial Brief at 16; Pet. Ex. Vol. I, pt. 5 at 4; Pet. Ex. Vol. IV, pt. 5, at 3. However, the court notes that the handwritten notes do contain the line "no complaints." Pet. Ex. Vol. I, pt. 5 at 4. On the other hand, petitioners accurately state that while a CBC, differential, and lead test were ordered, there was no mention that the tests were recommended because they were "not done before," as transcribed by Dr. Jariwala. Petitioners' Post Trial Brief at 17; Pet. Ex. Vol. I, pt. 5 at 4; Pet. Ex. Vol. IV, pt. 5, at 4. Further, the transcription of the record from this visit omits the note that "Mom does not want vaccine at this time." Id.

(temperature noted as 98.4 degrees). Dr. Almasi diagnosed a viral syndrome. Id. Eva returned to see Dr. Almasi again on December 4, 2000, with fluid in her right ear.¹¹ Id. Dr. Almasi prescribed amoxicillin and Eva was given diphtheria, tetanus, and acellular pertussis (“DTaP”)¹² and inactivated polio virus (“IPV”)¹³ vaccinations. Id. at 3, 10.

On April 16, 2001,¹⁴ Eva saw Dr. Almasi for another well-child visit. Id. at 2. Dr. Almasi noted bruising on Eva’s left chest wall and a few petechia, but declared Eva to be a well child.¹⁵ Id. Dr. Almasi continued to recommend CBC, differential blood count, and lead tests. Id.

Eva had the CBC, differential blood count, and lead tests done at Chilton Memorial Hospital on April 23, 2001. Id. at 40-41. The CBC revealed a platelet count of 7,000 per mm³ of blood. Id. at 40. Because her platelet count was so far below the normal range of 130,000 to 400,000 platelets per mm³ of blood, Eva returned to her pediatrician’s office that same day. Id. at 2, 40. Dr. Jariwala noted in his history that there were “c/o easy bruising past 7 days,” a cold in March, and a similar episode in December. Id. at 2. And, on his physical examination, Dr. Jariwala noted that Eva did not have bruising on her abdomen and only one bruise on her elbow. Id. Dr. Jariwala further noted that Eva was to be admitted to a pediatric intensive care unit.¹⁶ Id.

¹¹ The transcription provided by Dr. Jariwala adds: “Right tympanic membrane was red.” Pet. Ex. Vol. IV, pt. 5 at 4. This comment is not in Dr. Almasi’s handwritten notes. Pet. Ex. Vol. I, pt. 5 at 3.

¹² The DTaP vaccine is “a combination of diphtheria toxoid, tetanus toxoid, and pertussis vaccine; administered intramuscularly for simultaneous immunization against diphtheria, tetanus, and pertussis.” Dorland’s Illustrated Medical Dictionary, supra note 2, at 1998.

¹³ The IPV vaccine is “a suspension of formalin-inactivated poliovirus . . . administered intramuscularly or subcutaneously for immunization against poliomyelitis.” Dorland’s Illustrated Medical Dictionary, supra note 2, at 2000.

¹⁴ The transcription provided by Dr. Jariwala incorrectly dates this visit with Dr. Almasi as April 6, 2001. Pet. Ex. Vol. IV, pt. 5 at 4.

¹⁵ The transcription provided by Dr. Jariwala omits the handwritten comment about the bruising and petechiae. Pet. Ex. Vol. IV, pt. 5 at 4.

¹⁶ Dr. Jariwala’s handwritten notes of his assessment appear to read:

CBC reviewed platelet 7000
Labs reviewed with family
Hema[illegible] [illegible] [illegible] care

Thus, on April 23, 2001, Eva was admitted to St. Joseph's Hospital and Medical Center ("St. Joseph's") to rule out ITP. Pet. Ex. Vol. I, pt. 8 at 122-23. A pediatric hematologist-oncologist examined Eva and reported the following history:

discussed. Admitted to PICU for work up & management. ITP r/o ALL unlikely.

Pet. Ex. Vol. I, pt. 5 at 2. However, Dr. Jariwala's transcription of his assessment is much more detailed, and reads:

Actually, the mother had gone for a routine CBC and a lead test at Chilton Memorial Hospital, and the CBC revealed a platelet count of 7,000. These labs were critical, hence the mother came in from the hospital to my office for a follow up and a checkup. These labs were discussed with the family in detail, and the child was admitted to St. Joseph's Hospital Pediatric Intensive Care Unit after consultation with the hematologist for further workup and management of ITP, which is idiopathic thrombocytopenic purpura. At that time ALL, acute lymphocytic leukemia, seemed unlikely on clinical grounds. The review of the growth chart shows that she has been growing well into her life, 75% for her height and 95% for her weight and 90% for her head circumference. Her developmental screening on a revised Denver rescreening was within normal limits. The vaccine table shows that the vaccines are up to date and informed consent was taken for each vaccine. Her developmental screening in the office remained unremarkable. Lead done on 4/24/01 was 2. On 4/23/01, the WBC count was 5.4, RBC 4.53, hemoglobin 11.9, hematocrit of 36.0, platelet 7,000, 27 neutrophils, 64 lymph's, 4 mono's and 2 eosinophils. We have a urine test from St. Joseph's Hospital, Paterson on 4/23/01 which essentially was negative with a specific gravity of 10.30 and repeat one on 4/24/01 which again was unremarkable with few amorphous urate crystals.

We also have a record of her visit to the emergency room at Chilton Memorial Hospital, Account # K000254450 on 12/9/01. The only thing I can make out is that she came in for the visit to the emergency room for pain in the side. The ER notes are very faint and they are not legible. She was seen by doctor in the emergency room, so you can ask for a transcription of those services from the hospital.

Pet. Ex. Vol. IV, pt. 5 at 4-5. It is apparent that Dr. Jariwala, for an undisclosed reason, included references to other records he had access to in his transcription of his April 23, 2001 assessment. It is noteworthy that Dr. Jariwala had these notes transcribed in response to a request by counsel and the special master and thus, during the course of this litigation.

2 year old female child with no previous significant medical illnesses admitted to PSD with history of easy bruisability x2 wks to minor trauma, with plt ct of 7000 . . . This was proceeded by acute gastroenteritis that lasted for 1/2 week in March after returning from Disneyland (vomiting, diarrhea, & fever). Mom also reports that she experienced similar skin marks in December but to a much less extent & that was also preceded by a cold in Nov.

Id. at 122. On examination, this same physician noted: “diffuse, small petechiae [on] whole body (extremities, trunk, abdomen, & face) & bruises[,] mainly on exterior surfaces of the extremities.” Id. at 123. Carolyn Fein Levy, M.D., another hematologist-oncologist, also examined Eva on this date. Id. at 124. After discussing the risks and benefits with Eva’s parents, Dr. Fein Levy treated Eva with intravenous WinRho.¹⁷ Id. Eva was discharged from St. Joseph’s the following day. Id. at 121.

Eva next saw Dr. Fein Levy on April 30, 2001. Id. at 94. Eva had been “doing well”—her bruises had either resolved or were resolving and the petechiae were gone. Id. In a letter to Dr. Jariwala dated May 1, 2001, Dr. Fein Levy wrote:

Patient had been seen in your office for a routine check-up and complained of easy bruisability for two weeks. She had a viral illness four weeks earlier. Mother also reports that she had seen similar skin marks and bruises in December of 2000 and that was also preceded by a URI.

Pet. Ex. Vol. I, pt. 5 at 38.

However, by May 8, 2001, Eva’s platelet count had fallen and she had bruising on her right thigh and petechiae on her thigh and chest. Pet. Ex. Vol. I, pt. 8 at 91. Thus, Eva had another WinRho treatment at St. Joseph’s. Id. at 91-93. In a note dated May 9, 2001, Dr. Fein

¹⁷ WinRho is a “ Rh₀ (D) Immune Globulin (Human) that is licensed for . . . the treatment of immune thrombocytopenic purpura.” Cangene Corp., WinRho® SDF, at <http://www.cangene.com/products-winrho.htm> (last updated May 8, 2003). WinRho “contains a high amount of antibodies that like to attach to red blood cells”; the body destroys the antibody-coated red blood cells, “leaving the ‘antibody coated platelets’ alone” and allowing “the platelet count in the body to rise.” Children’s Hospital Boston, ITP Kids - WinRho®-SDF, at http://www.itpkids.org/docs/winrho_sdf.html (last visited May 5, 2005).

Levy indicated that if Eva continued to require treatment, treatment with prednisone¹⁸ and IVIG¹⁹ would need to be considered. Id. at 90.

Sometime in May 2001, after her second treatment with WinRho and when she was twenty-five months old, Eva was seen by Scott Gerson, M.D. of Ayurvedic Medicine of New York.²⁰ Pet. Ex. Vol. I, pt. 9 at 3-4. Dr. Gerson recounted the following history: “Had MMR vaccination & 1 mo after (Oct. 2000) devel. ‘red dots’ over body. Had [] ear infection → Amox[icilin]. Still had peripheral lesions in Dec 2000. In March → intest. viruses.” Id. at 3.

Eva returned to St. Joseph’s on May 15, 2001. Pet. Ex. Vol. I, pt. 8 at 89. Dr. Fein Levy noted that there was no new bruising, no petechia, no bleeding, and that Eva’s arm rash was improving. Id. But, on May 25, 2001, Eva’s platelet count was significantly lower and thus she went to St. Joseph’s for treatment with prednisone and IVIG. Id. at 87, 112. Subsequent to that treatment, Eva did not have any bleeding or petechiae at visits to St. Joseph’s on May 30, 2001, and June 4, 2001. Id. at 83, 85.

On May 31, 2001, Eva was examined by Lawrence Palevsky, M.D., at the Continuum Center for Health and Healing in New York City. Pet. Ex. Vol. I, pt. 10 at 1-4. Dr. Palevsky reported the following history:

2 y/o girl with recent diagnosis of ITP. Mom noticed onset of easy bruisability at 16 months[,], one month after MMR vaccination-8/00. Bruises cont’d on chest, leg for next several months. Had viral illness in 3/01, developed lots of petechiae and bruises.

Id. at 1. Dr. Palevsky’s impression was “2 y/o girl with ITP, perhaps related to MMR vaccine.” Id. at 3. He recommended alterations in Eva’s diet, cod liver oil, vitamins, and herbs. Id. at 4.

Because Eva’s platelet count had decreased and her bruising had increased, she had another IVIG treatment at St. Joseph’s on June 19, 2001. Pet. Ex. Vol. I, pt. 8 at 77-81, 111.

¹⁸ Prednisone is “a synthetic glucocorticoid derived from cortisone, administered orally as an antiinflammatory and immunosuppressant in a wide variety of disorders.” Dorland’s Illustrated Medical Dictionary, supra note 2, at 1500.

¹⁹ IVIG is an abbreviation for intravenous immunoglobulin, and is “a preparation of immune globulin suitable for intravenous administration; used in the treatment of primary immunodeficiency disorders.” Dorland’s Illustrated Medical Dictionary, supra note 2, at 778.

²⁰ According to Dr. Gerson’s website, Ayurvedic medicine “is a holistic system of healing which evolved among the Brahmin sages of ancient India some 3000-5000 years ago.” National Institute of Ayurvedic Medicine, Basic Principles of Ayurveda, at <http://niam.com/corp-web/definition.html> (last visited Jan. 13, 2005).

Eva returned to St. Joseph's on June 27, 2001, with a rash on her neck. Id. at 76. Dr. Fein Levy noted that Eva had been ill for about two days after her last IVIG treatment with a fever of 103 to 104 degrees and bad headaches. Id.

Eva returned to St. Joseph's on July 6, 2001, with bruising and petechiae on her lower extremities. Id. at 73. Ms. Baglio did not want Eva to have an IVIG treatment that day because of Eva's severe reaction to the last treatment. Id. at 74. However, on July 9, 2001, Eva did have an IVIG treatment. Id. at 70-72, 75. At a follow-up visit on July 16, 2001, Eva was noted to have done well with the last IVIG treatment, due to a longer infusion, and that she did not have any new petechiae or bleeding. Id. at 69. But then, on July 23, 2001, Eva had bruises on her forearms, legs, and back. Id. at 68.

On July 25, 2001, Eva saw James B. Bussel, M.D., at New York-Presbyterian Hospital, for a second opinion. Pet. Ex. Vol. I, pt. 11 at 2. In his history, Dr. Bussel reported: "[At] 17 mos of age - 2 wks after MMR vaccine - had petechiae on thigh, ankles; 6 months (appt for CBC) later a CBC was done. Plt 7000." Id. at 3. Dr. Bussel recommended an IVIG treatment for the next day, starting prednisone, and rechecking the platelet counts. Id.

During visits to St. Joseph's on July 27, 2001, and August 1, 2001, Dr. Fein Levy discussed with Ms. Baglio the treatment of Eva's ITP with a combination of WinRho and Solu-Medrol.²¹ Pet. Ex. Vol. I, pt. 8 at 66-67. Ms. Baglio wanted to defer this treatment until she ascertained whether herbs Eva was taking maintained or increased Eva's platelet count. Id. at 66. At the August 6, 2001 visit, Eva had no new bruises but did have some old bruises and petechiae on her back and chest. Id. at 64. But, Eva did have new bruises at an August 13, 2001 visit at St. Joseph's. Id. at 62. Because Eva's platelet count was low, she underwent treatment with WinRho. Id. at 62-63. In a follow-up letter to Dr. Jariwala dated August 23, 2001, Jill S. Menell, M.D., another hematologist-oncologist at St. Joseph's, wrote that Ms. Baglio suspected that Eva's ITP was secondary to her MMR vaccination. Pet. Ex. Vol. I, pt. 5 at 30.

On August 14, 2001, Eva was seen by Edward Shalts, M.D. for a homeopathic evaluation. Pet. Ex. Vol. I, pt. 13 at 1-2. Dr. Shalts prescribed a homeopathic remedy but stressed to Ms. Baglio that the remedy was not an alternative to conventional therapies. Id. at 2.

Because Eva had a poor response to her last treatment of WinRho, she was prescribed prednisone on August 20, 2001. Pet. Ex. Vol. I, pt. 8 at 61. Eva did not have any new bruises at her August 24, 2001 visit to St. Joseph's but had a few bruises and some petechiae at her August 31, 2001 visit. Id. at 58, 60. Thus, Eva underwent another IVIG treatment on August 31, 2001.

²¹ Solu-Medrol is the "trademark for a preparation of methylprednisolone sodium succinate," which is "a synthetic glucocorticoid derived from progesterone, used . . . as an antiinflammatory and immunosuppressant." Dorland's Illustrated Medical Dictionary, *supra* note 2, at 1147, 1719. Solu-Medrol is "chiefly used for the rapid achievement of high blood levels of methylprednisolone in short-term emergency treatment." Id. at 1147.

Id. at 57. As a result of this treatment, Eva experienced a fever and vomiting. Id. at 56. On September 6, 2001, Dr. Fein Levy discussed with Ms. Baglio that Eva's condition probably was chronic. Id.

On September 12, 2001, Eva returned to St. Joseph's with increased bruising and began three days of treatment with Solu-Medrol. Id. at 52-55. Then, on September 19, 2001, Dr. Menell consulted with Dr. Bussel and discussed Dr. Bussel's treatment recommendations with Ms. Baglio. Id. at 48-49. Dr. Bussel recommended a combination treatment of IVIG/WinRho and steroids. Id. at 48. Dr. Menell and Ms. Baglio decided to give Eva a WinRho treatment the next day and if the platelet count remained low, another treatment of IVIG. Id. at 45-47, 49. Ms. Baglio told Dr. Menell that she wanted Eva to try herbal remedies. Id. at 49. If those remedies failed, then Eva would begin taking Imuran.²²

Eva was doing well, with no new bruises, at a September 21, 2001 follow-up visit at St. Joseph's. Id. at 44. Then, at the September 24, 2001 visit to St. Joseph's, Ms. Baglio reported that Eva had started the herbal remedy and wanted to give it a chance to work before Eva had another IVIG treatment. Id. at 42. Ms. Baglio was "strongly advised" to allow Eva to receive an IVIG treatment during a visit to St. Joseph's on September 28, 2001. Id. at 39. Ms. Baglio stated that she wanted to give the herbal remedy a few more weeks to work. Id. However, when Eva developed oral petechiae on September 30, 2001, Ms. Baglio consented to another treatment of IVIG. Id. at 37-38. Dr. Menell noted that Eva had been poorly responsive to the steroids and WinRho and had only a minimal response to IVIG. Id. at 38.

On October 2, 2001, Eva saw Dr. Menell due to headaches from the IVIG treatment. Id. at 35. At an October 10, 2001 visit to St. Joseph's, Eva had more petechiae but no real bruising. Id. at 33. Another treatment of IVIG was recommended but Ms. Baglio doubted IVIG's efficacy and wanted to give the herbal remedy a longer trial. Id. Eva showed mild, scattered bruising and peteciae, but no active bleeding, at her October 12, 2001 visit to St. Joseph's. Id. at 31. At this visit, Dr. Menell discussed a variety of treatment options with Eva's family. Id. Ms. Baglio decided to give the herbal remedy one more week and then start Eva on Imuran. Id. at 32.

Eva returned to St. Joseph's on October 17, 2001. Id. at 28-29. Eva's bruising was better but she had peteciae on her chest and neck. Id. at 28. Ms. Baglio still refused IVIG treatment, and continued to do so through April 17, 2002. Id. at 2-28.

²² Imuran is the "trademark for preparations of azathioprine" that is "used . . . in treatment of a number of autoimmune disorders." Dorland's Illustrated Medical Dictionary, supra note 2, at 187, 918.

On November 16, 2001, Dr. Menell recommended that Eva begin taking Decadron²³ and/or Imuran. Id. at 22-23. There is no evidence in St. Joseph's records that Eva ever took the Imuran, but Eva may have taken some Decadron. Id. at 16-17. According to the records from St. Joseph's, Eva's platelet count began to increase in February, March, and April 2002. Id. at 2-14.

On December 7, 2001, Eva sought homeopathic treatment from Pratap C. Singhal, M.D. in Belleville, New Jersey, and continued to see him through July 2003. Pet. Ex. Vol. I, pt. 16; Pet. Ex. Vol. II.

On June 24, 2003, Eva had a consultation with Susan Hagen Morrison, M.D., P.A. for "food allergies vs. heavy metal exposure." Pet. Ex. Vol. III, pt. 4 at 1. Dr. Morrison noted that Eva was on a mercury remedy prescribed by Dr. Singhal. Id. at 1-2. Dr. Morrison concluded that food allergies were not causing Eva's low platelet count. Id. at 3.

The Affidavits

Three affidavits were submitted by petitioners in this case: the Affidavit of Esme Johnston Baglio, the Supplemental Affidavit of Esme Johnston Baglio,²⁴ and the Affidavit of Michael Baglio. These affidavits provide the following additional information.

Ms. Baglio admits to being very cautious about exposing her children to germs. Pet. Ex. Vol. I, pt. 6 at 2. The Baglios' other child, Michael, became ill after receiving an MMR vaccination at age fifteen months. Id. at 2. Michael developed a fever of 105 degrees, a rash all over his body, and a prolonged rash around his mouth. Id. Dr. Jariwala assured Ms. Baglio that Michael was experiencing a typical MMR reaction. Id.

Due to Michael's reaction, Ms. Baglio was concerned about allowing Eva to have an MMR vaccination. Id. In light of her concern, Ms. Baglio did not go anywhere with her children during the week prior to Eva's August 11, 2000 MMR vaccination. Id. Then, for the week after the August 11, 2000 MMR vaccination, Ms. Baglio kept Eva at home to watch her. Id. at 3. Eva seemed fine. Id.

Thus, on August 20, 2000, the Baglios took a trip to the Great Adventure amusement park, meeting another family there. Id.; Pet. Ex. Vol. V at 2. Eva felt warm to Ms. Baglio when the family arrived at the theme park. Pet. Ex. Vol. I, pt. 6 at 3. Ms. Baglio assured her husband

²³ Decadron is the "trademark for preparations of dexamethasone" and is "a synthetic glucocorticoid, 25 times as potent as cortisol, used . . . as an antiinflammatory and immunosuppressant in a wide variety of disorders." Dorland's Illustrated Medical Dictionary, supra note 2, at 476, 504.

²⁴ Ms. Baglio's supplemental affidavit was filed in response to questions raised in respondent's Rule 4(b) Report, filed October 31, 2003.

and the family they met that Eva was merely feverish from her MMR vaccination and was not contagious. Pet. Ex. Vol. V at 2. Eva spent most of the day in her stroller. Pet. Ex. Vol. I, pt. 6 at 3; Pet. Ex. Vol. V at 2. As the day progressed, Eva became pale and tired and had a temperature of 103 degrees. Id. The Baglios decided to leave Great Adventure early, but when they got to their car, they realized that they still had the other family's car seat in their car from the ride through the safari. Pet. Ex. Vol. V at 2. Thus, the Baglios waited for over an hour for the other family to return to their car. Id. Then, during the night of August 20, 2000, Eva was very restless, waking four to eight times. Pet. Ex. Vol. I, pt. 6 at 3.

Subsequent to the trip to Great America, Eva's behavior changed. Id.; Pet. Ex. Vol. V at 3. Before that trip, Eva was a happy baby, but afterwards, Eva cried over the smallest things, became moody and restless, and would not sleep. Pet. Ex. Vol. I, pt. 6 at 3; Pet. Ex. Vol. V at 3. Ms. Baglio ascribed the change in Eva's behavior to the normal effects of growing up. Pet. Ex. Vol. I, pt. 6 at 3.

The Baglios spent Labor Day weekend²⁵ in Vermont. Id. at 3-4; Pet. Ex. Vol. V at 3-4. On Sunday, September 3, 2000, when Ms. Baglio took off Eva's shirt to change her, Ms. Baglio's friend pointed out a large bruise on Eva's chest. Pet. Ex. Vol. I, pt. 6 at 4. Ms. Baglio did not know how Eva had received the bruise. Id. According to Mr. Baglio, when he went into the house, his wife gave him an "'if looks could kill' stare." Pet. Ex. Vol. V at 3. Ms. Baglio then quietly informed Mr. Baglio about the bruise and asked him if he knew how Eva received it. Id. Mr. Baglio told his wife that he had not seen Eva fall or bang into anything. Id. Ms. Baglio continued to question her husband about the bruise because she was certain that Eva did not get the bruise while under her care because she always watched her children "like a hawk." Id. at 4. However, Mr. Baglio was sure that he had not seen Eva do anything that would result in a bruise. Id. Ms. Baglio also reports seeing bruises all over Eva's legs. Pet. Ex. Vol. I, pt. 6 at 3-4. At this point, Eva's parents assumed that she was an easy bruiser. Pet. Ex. Vol. V at 4.

During this same weekend, Ms. Baglio noticed what she now knows are petechiae. Pet. Ex. Vol. I, pt. 6 at 3-4. Ms. Baglio assumed that the red spots were prickly heat²⁶ due to the high temperature. Id. at 4.

In the weeks following Labor Day weekend, Eva appeared to be depressed; she seemed sad and whined and cried all of the time. Id. Again, Ms. Baglio believed that Eva was just experiencing normal behavioral changes. Id. In addition to the behavioral changes, the "little

²⁵ The court takes judicial notice that Labor Day in 2000 fell on September 4.

²⁶ Prickly heat, also known as miliaria rubra or heat rash, is "a condition resulting from obstruction to the ducts of the sweat glands, probably caused in part by prolonged maceration of the skin surface; the sweat escapes into the epidermis, producing pruritic erythematous papulovesicles. The severity of the symptoms fluctuates with the heat load of the individual." Dorland's Illustrated Medical Dictionary, supra note 2, at 820, 1159.

dots” on Eva’s skin came and went. Id.; Pet. Ex. Vol. V at 4. Ms. Baglio began to think that the patches were due to dry skin, and so she applied lotion to the affected areas. Pet. Ex. Vol. I, pt. 6 at 4. But, while the dots became lighter, they never went completely away. Id. Ms. Baglio noticed that the patches appeared in the areas where she touched Eva while changing Eva’s clothes or diaper. Id.

In October 2000, Eva went to a cousin’s birthday party. Id. Eva had dots on her face that “looked like she had gotten hold of a red pen.” Id. Ms. Baglio believed that the dots were a result of dryness from the cold weather and applied lotion to Eva’s face. Id. Ms. Baglio states that she put cover up on Eva to hide the petechiae. Pet. Ex. Vol. IV, pt. 1 at 6-8.

Eva continued to get unexplained bruises. Pet. Ex. Vol. I, pt. 6 at 4; Pet. Ex. Vol. V at 4. In November 2000, Ms. Baglio took Eva to see her pediatrician because Eva was pulling her ears. Pet. Ex. Vol. I, pt. 6 at 4. Dr. Almasi told Ms. Baglio that Eva was fine and that he “was not at all impressed with the petichia[e] on her body or face.” Id. at 5; Pet. Ex. Vol. V at 4.

Eva saw Dr. Almasi twice more in November and December 2000. Pet. Ex. Vol. IV, pt. 1 at 1-2. Ms. Baglio explained that there is no mention of the petechiae or bruising in the records from the three visits because: “Dr. [Almasi] was unconcerned about it or because on the particular day, the petechia[e] were light or faded and the bruising not extensive. The bruising and petechia[e] were, however, present on those days” Id. at 2. Additionally, Ms. Baglio reports that because Eva’s legs looked the worst, she dressed Eva in tights, which were never removed during Dr. Almasi’s examinations. Id.

By February 2001, the petechiae were increasing. Pet. Ex. Vol. I, pt. 6 at 5. Ms. Baglio would put cream on the affected areas and within a few days, the petechiae would lighten. Id. Thus, Ms. Baglio believed the cream was working. Id. However, the bruising continued to worsen. Id. In March 2001, Eva began to enjoy climbing in and out of her toy box, which resulted in her being covered in bruises. Id. At this point, Ms. Baglio ceased believing that Eva was just an easy bruiser. Id.

Ms. Baglio knew she needed to take Eva to the pediatrician, but due to how Eva appeared, she feared that the physician would think that she was abusing her daughter. Id. Thus, Ms. Baglio made an appointment with the pediatrician for two weeks later, on April 16, 2001. Id. During those two weeks, Ms. Baglio kept Eva away from her toy box and took her children on long drives to keep Eva quiet and to help the bruises disappear. Id.

On April 16, 2001, Eva saw Dr. Almasi. Id. During the visit, Ms. Baglio kept Eva in her tights because Eva’s legs continued to be bruised. Id. at 6. During his examination, Dr. Almasi did question some bruises Eva had on her side from sliding off of a kitchen chair. Id. Then, Dr. Almasi told Ms. Baglio that Eva was fine and that he would see Eva at her next visit. Id. at 5-6. But, Ms. Baglio stopped Dr. Almasi from leaving the examination room and asked him about the petechiae on Eva’s body. Id. at 6; Pet. Ex. Vol. V at 4; Pet. Ex. Vol. IV, pt. 1 at 2-3. Dr. Almasi

looked at Eva again and said that the petechiae could be consistent with a low platelet count, noting that petechiae could occur after a viral infection and could take weeks or months to disappear. Pet. Ex. Vol. I, pt. 6 at 6; Pet. Ex. Vol. IV, pt. 1 at 3. Dr. Almasi ordered blood tests that Ms. Baglio needed to schedule at Chilton Memorial Hospital. Pet. Ex. Vol. I, pt. 6 at 6. Ms. Baglio states that she felt better after Dr. Almasi's explanation and Mr. Baglio stated that Ms. Baglio did not seem alarmed about the prospects of having the blood tests performed given her conversation with the pediatrician. Id.; Pet. Ex. Vol. V at 4.

Ms. Baglio took Eva to get her blood tested on April 23, 2001. Pet. Ex. Vol. I, pt. 6 at 6. Ms. Baglio explained why she had never before taken Eva for the blood tests prescribed by Eva's pediatrician. She states that it was the standard practice of Eva's pediatrician to order blood tests (including a lead test) for all of his pediatric patients, but the tests were meant only for those children who were exposed to lead. Pet. Ex. Vol. IV, pt. 1 at 3. Thus, because her children had not been exposed to lead, Ms. Baglio never had her children tested believing that they were unnecessary. Id. Further, Ms. Baglio waited a week to schedule the April 23, 2001 blood test because of lack of concern exhibited by Dr. Almasi and the need to arrange for her mother-in-law to babysit her son. Id.; Pet. Ex. Vol. V at 4-5.

At 12:45 p.m. on April 23, 2001, someone from the lab called Ms. Baglio to get Dr. Jariwala's correct telephone number. Pet. Ex. Vol. I, pt. 6 at 6. Ms. Baglio asked what was wrong and she was told that there was something wrong with Eva's blood. Id. Five minutes after she hung up with the lab, Dr. Jariwala called Ms. Baglio. Id. Dr. Jariwala told Ms. Baglio to bring Eva to his office with an overnight bag because she needed to be hospitalized. Pet. Ex. Vol. IV, pt. 1 at 3. At his office, Dr. Jariwala, who had not seen Eva for over six months, asked Ms. Baglio to explain Eva's condition. Id. Ms. Baglio explained that one week prior, Eva had seen Dr. Almasi for a check up; Ms. Baglio believes this reason is why Dr. Jariwala wrote "c/o easy bruising past 7 days" in his notes from this visit. Id. at 3-4. Dr. Jariwala explained to Ms. Baglio that Eva's platelet count was dangerously low and that Eva needed to be admitted to St. Joseph's, where Dr. Fein Levy was waiting. Id. at 4. Ms. Baglio asked Dr. Jariwala if Eva could have leukemia and he responded that it was a possibility. Id.; Pet. Ex. Vol. I, pt. 6 at 6.

Ms. Baglio recounts that the next few hours were a blur. Pet. Ex. Vol. I, pt. 6 at 6. Mr. and Ms. Baglio took Eva to the hospital, where Eva had more blood tests and the Baglios asked many questions. Id. Eva was eventually diagnosed with ITP. Id. The physicians, including Dr. Fein Levy, told the Baglios that ITP was usually an acute condition that would be cured after one or two treatments, and was probably caused by a viral infection. Id. at 6-7. Because of Dr. Fein Levy's reference to a viral infection, Ms. Baglio told Dr. Fein Levy about the amoxicillin Dr. Almasi prescribed for Eva to ward off an ear infection in December 2000. Pet. Ex. Vol. IV, pt. 1 at 2. At this time, no one, including Dr. Fein Levy, had suggested that Eva's MMR vaccination may have caused the ITP. Id. at 4.

Eva was given an intravenous treatment of WinRho at St. Joseph's. Pet. Ex. Vol. I, pt. 6 at 7. The next day, Eva's platelet count was 30,000 and she was discharged. Id. Ms. Baglio

states that the WinRho made Eva anemic; she was pale and could not stand from a seated position on her own. Id. Despite this, Eva's platelet count continued to rise to 75,000 over the following week. Id.

Unfortunately, Eva's platelet count dropped back down to 7,000, and she returned to St. Joseph's for another treatment of WinRho. Id. Ms. Baglio informed Dr. Fein Levy that Eva had not been sick until her MMR vaccination and asked whether the MMR could have caused the ITP. Id. Dr. Fein Levy answered in the affirmative. Id. Ms. Baglio also asked Dr. Fein Levy whether Eva's nine-month history of symptoms indicated that her condition could be chronic. Id. at 7-8. Dr. Fein Levy responded that she was hopeful, but she did not sound reassuring to Ms. Baglio. Id. at 8.

The second WinRho treatment again caused Eva to become anemic and also caused white patches to appear on Eva's skin. Id. Eva's platelet count rose only to 40,000 and soon returned to 7,000. Id. The Baglios were told that WinRho could not be used again because it was not helping and because it caused the anemia and white patches. Id. Thus, IVIG was recommended. Id. Ms. Baglio was reluctant to try IVIG because it contained "thousands of donor antibodies" but felt that she had no choice. Id. Thus, Eva was given a treatment of IVIG and the side effects were more severe than the effects of the WinRho. Id. The physicians informed Ms. Baglio that Eva was experiencing a typical reaction to IVIG. Id.

Eva was to be a flower girl at her uncle's wedding in Florida. Id. Before the wedding, Eva was admitted for another IVIG treatment. Id. The night of the treatment, Eva's face was full of petechiae and she turned a pale gray. Id. at 9. Eva woke up early the next morning throwing up and with a fever of 104.3 degrees. Id. The fever lasted for thirty-six hours; Ms. Baglio described this time as being in hell. Id. But, Eva's platelet count did rise to 120,000, and the physicians allowed Eva to travel to Florida. Id.

Eva underwent five treatments of IVIG altogether. Id. Then, the IVIG stopped working and prednisone was tried. Id. After a few weeks, the prednisone was no longer effective. Id. Eva was then treated with intravenous steroids. Id. at 10-11. Then, more treatments of IVIG and WinRho were tried. Id. at 11. The Baglios also tried herbal remedies. Id. Eva was eventually diagnosed with chronic ITP. Id. at 10. Ms. Baglio took Eva to see an ayurvedic physician, a nutritionist, a homeopath, and a hematologist; all agreed that Eva suffered from ITP as a result of her MMR vaccination. Id.

In her supplemental affidavit, Ms. Baglio expanded on her reasoning to take Eva to see an ayurvedic physician, Dr. Gerson. Pet. Ex. Vol. IV, pt. 1 at 7. Ms. Baglio explained that she disliked seeing Eva suffer from all of the side effects of her treatments and wanted to try something natural. Id. In recounting Eva's history to Dr. Gerson, Ms. Baglio was unsure of the date the MMR vaccination was administered to Eva and therefore gave a general answer about the date of vaccination, which was reflected in Dr. Gerson's records. Id. Ms. Baglio states that

she did not start to seriously consider the timing of events until Eva had her appointment with Dr. Palevsky. Id. Ms. Baglio states:

I told Dr. Palevsky that Eva was about 16 months when the bruising and petechiae were obvious. Eva was still 16 months old over Labor Day weekend. His notes reflect one month after the vaccine. Labor Day weekend was probably 21 or 22 days later. I said a month. I really did not think he needed to know the exact number of days so I generalized a month because it was three weeks, close enough to a month.

Id. at 8. Ms. Baglio added that in the first weeks after Eva's diagnosis, she was just trying to find a cure for Eva's ITP and was not focused on ascertaining the exact number of days between the MMR vaccination and the appearance of the first bruising and petechiae. Id. at 8-9.

In December 2001, having no success with any of the prior treatments, Ms. Baglio took Eva to see Dr. Singhal. Pet. Ex. Vol. I, pt. 6 at 12. Dr. Singhal began to "detoxify" Eva, with modest results. Id. Then, in September 2002, Michael started school and began to bring home illnesses from his classmates. Id. As a result, Eva often became ill and these illnesses made it difficult to accurately determine her platelet count. Id.

In addition to their affidavits, petitioners submitted photographs of Eva depicting her appearance when her platelet count is between 5,000 and 10,000 and when her platelet count is under 5,000. See Pet. Ex. Vol. IV, pts. 2-3. Ms. Baglio explains that she can generally tell what Eva's platelet count is by looking at Eva's petechiae and bruising. Pet. Ex. Vol. IV, pt. 1 at 5. Ms. Baglio further explains that even when Eva's platelet count is between 5,000 and 10,000, Eva's petechiae are light and practically undetectable and Eva's bruising is mild. Id. at 5, 9. In addition, certain viral infections raise Eva's platelet count, causing the petechiae and bruising to almost disappear. Id. at 5. Ms. Baglio speculates that the reason no mention of petechiae or bruising is made in Dr. Almasi's notes from the three visits in November and December 2000 is because the platelet count was high enough, from viral infection or otherwise, to cause the petechiae and bruising to be faint. Id. at 5-6.

The Hearing

The hearing was held on May 11, 2004, in New York, New York. Both petitioners testified, and they provided the following additional information.

Ms. Baglio testified that she was a stay-at-home mother who made every effort to prevent her children from being exposed to germs.²⁷ Tr. at 7. The only time Ms. Baglio took her children to their pediatrician was for their routine check ups. Id. at 8. Ms. Baglio had cancelled

²⁷ All references to the Transcript of the hearing conducted on April 6, 2004, shall be designated herein as "Tr. at ____."

Eva's original check up at which she was to receive the MMR vaccination because Ms. Baglio feared that Eva would have a reaction similar to her son Michael's reaction. Id. at 9. However, Dr. Jariwala assured Ms. Baglio that the reaction experienced by Michael only happened to one in five children and thus it was likely that Eva would have no problems. Id. With this assurance, along with the knowledge she had gained from reading about the side effects of the MMR vaccine, Ms. Baglio took Eva for her check up and MMR vaccination on August 11, 2000. Id. at 10, 58-59.

Ms. Baglio stated that Eva was seen by Dr. Almasi at the August 11, 2000 visit. Id. at 10. But see Pet. Ex. Vol. I, pt. 5 at 4 (handwriting appears to be that of Dr. Jariwala). Prior to the visit, Ms. Baglio was careful not to expose Eva to any germs. Id. at 11. The pediatrician recommended that Ms. Baglio give Eva some Tylenol and sent them home. Id. Ms. Baglio kept Eva at home for the week following the vaccination "just to make sure she wouldn't pick up any other virus to coincide with the measles shot." Id.

In recounting the August 20, 2000 trip to Great Adventure, the Baglios both testified that Ms. Baglio told her husband that Eva was experiencing the same kind of fever that Michael had experienced after his MMR vaccination. Id. at 12, 68, 121. Ms. Baglio also informed the friend that they met at Great Adventure of her belief that Eva's fever was caused by her MMR vaccination. Id. at 68-69, 121. Ms. Baglio was unconcerned with Eva's fever because Michael had experienced the same symptom and because Dr. Jariwala had assured her that fever was a common side effect of the MMR vaccination. Id. at 13-14. Due to her prior experience with her son, Ms. Baglio did not call Dr. Jariwala about Eva's fever and instead treated Eva with Tylenol. Id. at 14. Eva's fever lasted about two days, but afterwards she retained the paleness she had begun to exhibit on the second day of her fever. Id. at 14-15, 67-68. Ms. Baglio remarked that Eva's reaction was exactly the same as her son's reaction. Id.

By Labor Day weekend, Eva continued to appear tired, unhappy, and "mopey." Id. at 15-16, 122. But, because in every other respect Eva seemed normal, Ms. Baglio did not call the pediatrician. Id. at 16. Ms. Baglio assumed that Eva was just "changing her look." Id.

The "juicy red" bruise that Ms. Baglio and her friend noticed on Eva's chest was the first time Ms. Baglio had ever seen a bruise on Eva. Id. at 17-18. Ms. Baglio had removed Eva's shirt because it was covered with Cheez Doodles, but immediately put Eva's shirt back on, "in shock." Id. Ms. Baglio quizzed her husband about the bruise, but he too was unaware of its cause. Id. at 18, 123. Mr. Baglio testified that he clearly remembers Eva's bruise in Vermont because it was the first time he felt he was getting the blame for the bruising, even though he had no idea how Eva got the bruises. Id. at 127-28. Because Ms. Baglio thought Eva had received the bruise from a fall or similar accident, Ms. Baglio did not take a picture of it. Id. at 71-72.

Ms. Baglio noted that Eva also began to get petechiae during that Labor Day weekend. Id. at 19. She noticed "some red scratch lines" on Eva's neck, which were completely different than the full-body rash her son Michael got after his MMR vaccination. Id. at 19, 69-70. But see

id. at 128 (Mr. Baglio's testimony that the red marks on Eva's face looked like his son's MMR rash). Ms. Baglio assumed that Eva had prickly heat due to the "90-something degree" temperature. Id. at 19, 70. So, she applied some cream, possibly Vaseline Intensive Care, on the area and the marks faded. Id. Ms. Baglio's next recollection of petechiae were the petechiae on Eva's ankle in the spot where Ms. Baglio lifted Eva to change Eva's diaper. Id. at 70-71. According to Ms. Baglio, those petechiae were chronic; they got lighter and darker, but never completely disappeared. Id. at 70.

After the Labor Day weekend, Ms. Baglio stated that Eva's energy returned and she did not look as pale. Id. at 19, 68. However, Ms. Baglio distinctly remembers that the bruising and petechiae were apparent in mid-October. Id. at 20, 72-73. On the day of her cousin's birthday party, Ms. Baglio used cover up to hide a "nasty" bruise on Eva's wrist and petechiae on Eva's face. Id. Between Labor Day and the birthday party, Eva's petechiae would come and go and she would get occasional bruises. Id. at 20-21, 75-77, 124. In regards to the petechiae, Ms. Baglio said that she would apply cream to them when they appeared and that the petechiae would then fade away. Id. at 75-76. Ms. Baglio believed that Eva just suffered from "rashy skin." Id. at 78-79. In addition, Ms. Baglio assumed that with her increased activity, Eva was an easy bruiser, like many in her family, and began to replace Eva's toys with softer items to play with. Id. at 21-22.

Ms. Baglio testified that Dr. Almasi saw Eva twice in November 2000: once for a well-child visit and once because Eva had been pulling on her ears.²⁸ Id. at 22-24. Ms. Baglio believes that Dr. Almasi did not remark on Eva's petechiae or bruising because at the time of the visits, they were barely noticeable. Id. at 23-24. Specifically, she stated:

I think she did have a little petechia[e] on her neck, but he didn't seem to notice it, and I thought it was a rash, and I would put cream on it, and it would come and go, and there were some weeks that she didn't have really any bruises.

...

She may not have had many bruises at that time. Like I said, there would be days, you know, she would have had a bad one on her leg. . . . [B]ut there were some days if you'd look at her face she doesn't have any bruises. . . . If she would take a bad fall on her toy, yes, she would have a bruise, but you know, I was trying

²⁸ Some of Ms. Baglio's testimony centered on whether Eva had a fever at the time of the November 16, 2000 visit to Dr. Almasi. See Tr. at 84-88. Ms. Baglio is adamant that Eva did not have a fever and that she did not tell Dr. Almasi that Eva had a fever. Id. In fact, Eva's temperature was recorded as 98.4 degrees. Id. at 86. Even though Eva did not register a fever, Dr. Almasi wrote "fever" as a complaint and "viral syndrome" as an assessment. Id. at 84, 87-88.

to be really careful with her too because I was realizing that this kid is an easy bruiser

Id. In addition, Ms. Baglio did not mention the petechiae to Dr. Almasi because he made no comment about them after examining Eva.²⁹ Id. at 80-81.

Dr. Almasi next saw Eva for a well-child visit in December 2000. Id. at 24. Ms. Baglio said that she showed Dr. Almasi “some little dots” on Eva’s face. Id. at 24, 90. Dr. Almasi seemed unconcerned to Ms. Baglio and recommended that Ms. Baglio apply cream to the area. Id. at 25, 90. Ms. Baglio stated that she probably did not mention Eva’s bruising to Dr. Almasi because he examined Eva and saw no bruising, and Eva likely did not have any bruising at that time. Id. at 91. Dr. Almasi provided a prescription for amoxicillin to ward off any possible ear infection Eva might be getting and declared Eva to be a well child. Id. at 25.

Through January and February of 2001, Ms. Baglio reported that Eva’s petechiae and bruising continued to come and go. Id. at 26, 92. However, Eva’s bruising increased in March. Id. At the end of a trip to Disney World, Eva and her brother both got a bad stomach virus. Id. at 26-27, 93. Eva was ill during the entire drive back from Florida to New Jersey. Id. at 27, 93. Ms. Baglio stated that as Eva began to recover, she began to enjoy climbing in and out of her toy box. Id. at 27, 93. As a result, Eva received “hundreds” of bruises. Id.; see also id. at 94 (Ms. Baglio stated Eva “was covered with about 60 bruises”).

At this point, in late March 2001, Ms. Baglio realized that Eva was “seriously ill.” Id. at 27-28, 31-32. Ms. Baglio felt that she could not immediately take Eva to her pediatrician, however, due to her fear that the pediatrician would remove Eva from her home. Id. at 28, 98-99; see also id. at 95 (“She looked like I had taken a baseball bat and literally beaten the crap out of her.”). Thus, she scheduled an appointment for two weeks in the future to give Eva’s bruises time to disappear. Id. at 28-29, 94. During these two weeks, Ms. Baglio did not allow Eva to touch anything. Id. at 28-29.

Ms. Baglio took Eva to see Dr. Almasi on April 16, 2001. Id. at 29. Ms. Baglio stated that she did not take off Eva’s tights because she was afraid of Dr. Almasi’s reaction to the remaining bruises. Id. at 95. In addition, Ms. Baglio stated that she did not tell Dr. Almasi how long the petechiae had been present on Eva’s body. Id. at 100.

Dr. Almasi prescribed a lead test and a CBC. Id. at 30. According to Ms. Baglio, Dr. Almasi expressed no urgency in getting the testing done. Id. at 32, 98, 100. Ms. Baglio

²⁹ Ms. Baglio implied that Dr. Almasi’s examination of Eva was not comprehensive: “[H]e probably just said mommy didn’t mention anything to me. He’s good. Believe me. He’s in and out real quick, Dr. Almasi.” Tr. at 82. Mr. Baglio was more direct about the well-child visits, stating that the pediatricians tried to get them in and out as quickly as possible. Id. at 132-33.

explained that she had not taken her children to have the lead test prior to this because the test had never been recommended with reference to a specific threat of lead exposure. Id. at 30. Instead, Ms. Baglio stated that the lead test was just a standard test the pediatricians prescribed for the children in their practice. Id. at 30-31. Ms. Baglio also explained that she had not taken Eva for a CBC in April 2000 because Dr. Jariwala explained that it was just a standard test and none of Ms. Baglio's friends had taken their children for a CBC. Id. at 61-63.

Addressing Dr. Jariwala's written note on April 23, 2001, that Eva's complaint was "easy bruising past 7 days," Ms. Baglio testified: "[H]e's writing what I said. I said I came in here seven days ago to see Dr. Almasi. I said I was here last week; I was here seven days ago to see Dr. Almasi, and I told him that she'd been bruising easily" Id. at 101-02.

Ms. Baglio further explained that once at St. Joseph's, her recounting of Eva's history was affected by the fact that "six or seven different doctors" asked her "a million questions," all within the first "ten minutes" of her being in the hospital. Id. at 102-03. Thus, when the medical records mentioned "a cold in November," Ms. Baglio explained that because the physicians insisted that a virus was the cause of Eva's ITP, she might have agreed to this statement even though she knew it to be false. Id. at 104-05. Ms. Baglio also did not mention to Dr. Fein Levy any symptoms occurring before December 2000 because it was her hope that Eva would receive one treatment of WinRho and be cured, thus not mattering when exactly the symptoms first manifested. Id. at 107. Additionally, Ms. Baglio contends that she never told Dr. Fein Levy that Eva had an upper respiratory infection in November. Id. at 108.

Mr. Baglio had a different version of what his wife told the doctors the day Eva was diagnosed with ITP:

I remember when the doctors came back into the room and said . . . [w]e got the L-word out of there, the L-word being leukemia. That was not an issue, but basically she asked my wife questions; what did you notice []; when did you notice it; this, that, and the other thing. Then my wife had said right after her measles[s], mump[s], rubella vaccination.³⁰ The doctor, you know, definitely nodded in agreement yes, and I think almost every doctor that we had mentioned that to in one form or another kind of agreed with that.

Id. at 140-41 (footnote added).

About two weeks after Eva was diagnosed with ITP and had her first treatment of WinRho, Ms. Baglio had an extended discussion with Dr. Fein Levy. Id. at 35-38. Ms. Baglio recounted the conversation:

³⁰ Dr. Fein Levy's records make no mention of the MMR vaccination. In particular, the MMR is not mentioned in her May 1, 2001 letter to Dr. Jariwala. See Pet. Ex. Vol. I, pt. 5 at 38.

That's when she started talking to me and discussing with me about kids who don't respond and talking with me about chronic ITP and that, you know, I had told her the first day—she asked me how long this had been going on for, and I said a long time. I said but, you know, it would come and go. I didn't see these kind of bruises that she had now because once they examined her the following week she still had quite a few bruises on her legs. I said but it's been going on for a long time. She said when was she at the pediatrician last, . . . and I said that I had had her there in December, and they had given her amoxicillin for fluid in her ears. She said well, you know, this is always from a viral syndrome. Like I said, nobody ever would suggest to me a vaccine at that time. She said when had she been sick before. I said well, I had brought her in November for her ears, but he didn't give her any amoxicillin or anything at that time either.

As she was discussing with me about chronic ITP and that it doesn't resolve within six months you can be considered chronic, she said, but you could still get better over a year's time. That was when I told her, I said well, she's been having these symptoms for a long time. . . . I said, I remember putting cover up on her skin in October, and I said, and I remember her bruising in September, and I said, it all started right after her vaccine.

I said, do you think it could be from her vaccine, and she told me yes. I said well, do we treat her differently, you know, for the vaccine, and she said the treatments would be the same, so we left it at that.

Id. at 36-37; see also id. at 106-07. According to Ms. Baglio, at the time Mr. and Mrs. Baglio and Dr. Fein Levy discussed the likelihood of Eva's ITP being chronic, Dr. Fein Levy provided the Baglios with written information about ITP. Id. at 111. Ms. Baglio stated that the information did not mention the MMR vaccination as a possible cause of the ITP. Id. Mr. Baglio confirmed that a hematologist provided them with literature about ITP "right after [Eva's] diagnosis." Id. at 138-39. Mr. Baglio also stated that he was not sure when his wife began to research ITP on her own, but thought it was as soon as possible. Id. at 142.

Ms. Baglio also testified that she first realized Eva's ITP could be related to the MMR vaccination "[w]ithin the first couple days of diagnosis." Id. at 39, 109. She explained: "[A]s I was sitting there backtracking, the first thing that stuck out in my mind was October because I remembered putting the cover up on her skin which was abnormal." Id. at 39. Further, Ms. Baglio told Dr. Gerson that Eva's symptoms began in "the fall, September, October." Id. And, Ms. Baglio did not tell Dr. Pilevsky that Eva's symptoms began one month after her MMR vaccination; instead, she stated:

I wasn't trying to get the exact date. I was like, right after the MMR or within a month or a few weeks, but I was telling him it was shortly after, a couple weeks

after or the next month, you know. I wasn't trying to say it was 18 days later I saw it. He didn't care. He knew when I told him it was from the vaccine.

Id. at 42.

According to Ms. Baglio, by September 2001, Eva's various treatments were not successfully treating Eva's ITP. Id. at 43-44. It was in September 2001, Ms. Baglio became aware of Dr. Bah, an herbalist in California. Id.

Ms. Baglio testified that she learned how to use a computer "a couple of months after Eva was sick." Id. at 60. She further stated that she did not begin to do Internet research about ITP until September 2001, when she obtained a computer. Id. at 112. Mr. Baglio stated that his wife began researching ITP on the Internet "[o]nce she got Internet access," but dates the Internet research to within a "couple month period" of Eva's diagnosis. Id. at 139. An ITP website identified Dr. Bah and Dr. Singhal. Id. at 45. As for other possible sources of ITP research, Ms. Baglio stated that she did not use a computer at a library, id. at 45, and Mr. Baglio stated that he remembered a few trips to Barnes and Noble, but could not remember exactly when they went. Id. at 138-39.

DISCUSSION

In this case, the court must decide when the onset of Eva's ITP occurred. Petitioners urge an onset date of between seven and thirty days postvaccination, placing onset within the Vaccine Injury Table's ("Table") timeframe for thrombocytopenic purpura after MMR vaccination. Respondent contends that there is not a preponderance of the evidence that Eva's ITP symptoms began between seven and thirty days postvaccination.

The Vaccine Act's Provisions Regarding the Submission of Medical Records

The court is required to award compensation to a petitioner if the court finds, based upon the entire record,³¹ that the petitioner has proven a *prima facie* case by a preponderance of the evidence as outlined in 42 U.S.C. § 300aa-11(c)(1) and there is not a preponderance of evidence indicating that the alleged injury was caused by factors unrelated to the vaccine. Id. § 300aa-13(a)(1). The court "may not make such a finding based on the claims of a petitioners alone, unsubstantiated by medical records or by medical opinion." Id.

³¹ "[T]he term 'record' means the record established by the special masters of the United States Court of Federal Claims in a proceeding on a petition filed under section 300aa-11 of this title." 42 U.S.C. § 300aa-13(c).

Petitions in the Vaccine Program must be accompanied by

maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results

Id. § 300aa-11(c)(2). Petitioners may also submit any other relevant medical records. Id. § 300aa-11(d).

Greater Weight Is Afforded to Contemporaneous Medical Records

As explained above, the Vaccine Act explicitly requires that the existence of a fact must be demonstrated by a preponderance of the evidence. Id. § 300aa-13(a)(1). This standard has been explained to mean more than a possibility. The special master must “believe that the existence of a fact is more probable than its nonexistence before . . . find[ing] in favor of the party who has the burden to persuade the [special master] of the fact’s existence.” Ciotoli v. Sec’y of HHS, 18 Cl. Ct. 576, 588 (1989) (quoting In re Winship, 397 U.S. 358, 371 (1970) (Harlan, J., concurring) (quoting F. James, Civil Procedure 250-51 (1965))); see also Hines ex rel. Sevier v. Sec’y of HHS, 940 F.2d 1518, 1525 (Fed. Cir. 1991). Thus, the preponderance of the evidence standard requires the petitioner to “adduce evidence that makes the existence of a contested fact more likely than not.” Estate of Arrowood ex rel. Arrowood v. Sec’y of HHS, 28 Fed. Cl. 453, 458 (1993). Mere conjecture or speculation will not establish a probability. Snowbank Enters., Inc. v. United States, 6 Cl. Ct. 476, 486 (1984).

In general, testimony that conflicts with contemporaneous documentary evidence should be accorded little weight. United States v. United States Gypsum Co., 333 U.S. 364, 396 (1948); Cucuras v. Sec’y of HHS, 993 F.2d 1525, 1528 (Fed. Cir. 1993); Montgomery Coca-Cola Bottling Co. v. United States, 615 F.2d 1318, 1328 (Ct. Cl. 1980). Contemporaneous records, especially contemporaneous medical records, are given greater weight because: “Medical records, in general, warrant consideration as trustworthy evidence. The records contain information supplied to or by health professionals to facilitate diagnosis and treatment of medical conditions. With proper treatment hanging in the balance, accuracy has an extra premium. These records are also generally contemporaneous to the medical events.”³² Cucuras, 993 F.2d at

³² The court notes that in this case, there are no true contemporaneous medical records. Contemporaneous means “[o]riginating, existing, or happening during the same period of time.” The American Heritage Dictionary 316 (2d college ed. 1985). The records closest in time to petitioners’ alleged date of onset (Labor Day weekend) are dated November 7, 2000. While it is somewhat problematic to label records created two months later as “contemporaneous,” the

1528. A special master need not always give more weight to the contemporaneous medical records, however:

Written records which are, themselves, inconsistent, should be accorded less deference than those which are internally consistent. Records which are incomplete may be entitled to less weight than records which are complete. If a record was prepared by a disinterested person who later acknowledged that the entry was incorrect in some respect, the later correction must be taken into account. Further, it must be recognized that the absence of a reference to a condition or circumstance is much less significant than a reference which negates the existence of the condition or circumstance. Since medical records typically record only a fraction of all that occurs, the fact that reference to an event is omitted from the medical records may not be very significant.

Murphy v. Sec’y of HHS, 23 Cl. Ct. 726, 733 (1991) (quoting with approval the standard used by the special master below), aff’d per curiam, 968 F.2d 1226 (Fed. Cir. 1992).

Eva’s Medical Records Prior to May 2001 Do Not Reflect an Onset Date Between 7 and 30 Days Postvaccination But Subsequent Medical Records Suggest Otherwise

The medical records clearly show that Eva received an MMR vaccination on August 11, 2000. Eva returned to see one of her pediatricians, Dr. Almasi, three more times in the year 2000. The records from these three visits, on November 7, November 18, and December 4, 2000, fail to mention any bruising or petechiae on Eva’s body. Eva’s bruising and petechiae are first reflected in the records from Eva’s next pediatric visit, on April 16, 2001.

In his notes from the April 23, 2001 visit, Dr. Jariwala indicated that Eva had “c/o easy bruising past 7 days” and had a similar episode the previous December. Later on April 23, 2001, a pediatric hematologist-oncologist took a history and also noted a two-week history of easy bruising and “similar skin marks in December.” In addition, Dr. Gerson’s records of a May 2001 visit reflect that Ms. Baglio reported that Eva’s petechiae developed one month after her MMR vaccination. And, in records from a May 31, 2001 visit, Dr. Palevsky wrote that Ms. Baglio noted Eva’s easy bruising at age sixteen months, or one month after Eva’s MMR vaccination. Dr. Bussel’s July 25, 2001 record reflects that Eva’s petechiae began two weeks after her MMR vaccination, at age seventeen months. Finally, Dr. Mennell’s August 23, 2001 letter to Dr. Jariwala reflects her understanding that Ms. Baglio suspected the cause of Eva’s ITP to be the MMR vaccination.

notion that medical records closest in time to the event in question should be given more credence should still be respected.

The Affidavits and Testimony Provide Explanations for the Gaps, Deficiencies, and Contradictions in the Medical Records

Petitioners submitted three affidavits and provided oral testimony to supplement Eva's medical records and explain the discrepancies between their alleged date of onset and the onset dates reflected in the medical records.

Petitioners explained that Eva first became ill during an August 20, 2000 trip to Great Adventure. Eva experienced a fever that lasted about two days. Eva also underwent a change in behavior that did not soon go away; she became moody and restless. Petitioners believed Eva's fever was the same reaction experienced by their son and so they were unconcerned. Ms. Baglio believed Eva's behavioral changes were just a normal part of growing up.

Petitioners noticed Eva's first bruise over the Labor Day weekend in 2000. Neither petitioner could explain the large bruise that showed up on Eva's chest, and just assumed that she was an easy bruiser. Ms. Baglio also noticed what she believed to be a heat rash during that weekend.

Ms. Baglio explained that over the next few months, Eva continued to get unexplained bruises and the petichiae, which Ms. Baglio generally assumed to be rashy skin, came and went, but never completely disappeared. Ms. Baglio specifically remembers an incident in October where she used cover up to hide petechiae on Eva's face and a bruise on Eva's wrist prior to attending a birthday party.

Ms. Baglio stated that she asked Dr. Almasi about Eva's petichiae during one of the visits in November or December 2000, but he was unimpressed by what he saw. Ms. Baglio further stated that Eva's symptoms were not recorded by Dr. Almasi during the two other visits in November and December 2000 because Eva's bruising must not have been extensive and the petechiae must have been light or faded. Further, Ms. Baglio explained that because Eva's bruising was generally the worst on her legs, she dressed Eva in tights for her visits to the pediatrician. Ms. Baglio contends that Dr. Almasi never removed Eva's tights.

Ms. Baglio first realized that Eva was seriously ill late in March 2001. At this time, Eva began to enjoy climbing in and out of her toy box, resulting in extensive bruising. Fearing false charges of child abuse and the removal of Eva from her home if the pediatrician saw Eva's bruising, Ms. Baglio delayed scheduling a visit until April 16, 2001. At the April 16, 2001 visit, Dr. Almasi was prepared to declare Eva a well child after his examination until Ms. Baglio specifically pointed out the petechiae on Eva's body. At that time, Dr. Almasi posited that the petechiae could be a result of low platelets following a viral infection and recommended blood tests to verify his suspicion.

Ms. Baglio delayed taking Eva for the recommended blood test for one week because Dr. Almasi expressed no urgency in getting the blood tests performed and so that petitioners could arrange for Mr. Baglio's mother to babysit petitioners' son.

After the blood tests were performed on April 23, 2001, petitioners met with Dr. Jariwala to talk about the results. Ms. Baglio told Dr. Jariwala that she had taken Eva to see Dr. Almasi one week earlier, hence the notation: "c/o easy bruising past 7 days."

At St. Joseph's on April 23, 2001, the physicians initially told petitioners that they suspected that Eva's ITP was caused by a viral infection. With this information, Ms. Baglio searched her brain for incidents of viral infections. Ms. Baglio remembered Eva's ear-pulling in December 2000, and although she did not believe that Eva had a viral infection at that time, Ms. Baglio believed it might be relevant. Ms. Baglio insisted that she never told the physicians that Eva had an upper respiratory infection in November 2000. In addition, because the physicians at St. Joseph's indicated their hope that Eva's ITP was an acute event that could be quickly cured, Ms. Baglio did not initially provide additional information.

At the time of Eva's second treatment of WinRho on May 8, 2001, Ms. Baglio had an extensive discussion with Dr. Fein Levy. During this conversation, Ms. Baglio told Dr. Fein Levy that Eva became ill after her MMR vaccination and asked whether the MMR vaccine could cause ITP. Dr. Fein Levy responded in the affirmative, and so the medical records subsequent to this date reflect Ms. Baglio's linkage of Eva's ITP to her MMR vaccination. Ms. Baglio explained that the records of Dr. Gerson and Dr. Palevsky contain approximations of the amount of time between the date of Eva's MMR vaccination and the onset of her symptoms because she did not think an exact number of days was important to the treatment of Eva's ITP.

Ms. Baglio stated that she did not begin to do Internet research about ITP until she obtained a computer, which was in September 2001. In fact, Ms. Baglio did not learn how to use a computer until "a couple of months after Eva was sick."

1. Absence of Medical Records

The court first must address the nonexistence of medical records at the time of the August 20, 2000 trip to Great Adventure and the Labor Day weekend trip to Vermont. It is apparent to the court that petitioners were unconcerned about Eva's fever because the fever was not life-threatening, is not uncommon in young children, and was one of the symptoms that their son exhibited after his MMR vaccination. As explained above, at the time of their son's MMR vaccination, Dr. Jariwala assured petitioners that fever was a normal vaccine reaction. And, while petitioners were concerned about Eva's change in behavior and unexplained bruise, they were able to come up with probable explanations for these events: "a part of growing up" and "an easy bruiser." Both of these explanations are credible. Furthermore, the court finds petitioners' recollection of the events of August 20, 2000 and Labor Day weekend, 2000, to be generally clear, specific, and truthful. Moreover, both parents were very credible witnesses.

2. Pediatric Medical Records

Next, the court must address the failure of the medical records of Dr. Jariwala and Dr. Almasi, the alleged contemporaneous medical records, to document Eva's bruising and/or petechiae. The court is not impressed by the apparent conduct and record-keeping skills of Eva's pediatricians. Both petitioners perceived that Dr. Jariwala and Dr. Almasi were quick in performing their physical examinations of Eva. In fact, Ms. Baglio noted that Dr. Almasi never removed Eva's tights during his examinations. In addition, during his physical examination of Eva on April 23, 2001, Dr. Jariwala noted no bruising on Eva's abdomen, only one bruise on Eva's elbow, and noted no petechiae. Yet, later that same day, another physician noted multiple bruises on Eva's extremities and diffuse petechiae over Eva's entire body. It is hardly likely that the pronounced bruising and obvious petechiae manifested themselves immediately upon Eva's departure from Dr. Jariwala's office. To the contrary, it is apparent that Dr. Jariwala did not perform a thorough examination. Thus, this troubling discrepancy causes the special master to credit the parents' testimony over Dr. Jariwala's records.

Furthermore, in response to petitioner's request for a transcription of both pediatrician's handwritten notes, Dr. Jariwala provided a sloppy, and at times grossly inaccurate, transcription of both his and Dr. Almasi's notes. The transcriptions appear to be Dr. Jariwala's attempt to expand on both pediatricians' conversations with petitioners, even though these conversations were not contemporaneously recorded. However, Dr. Jariwala leaves out any expansion of what petitioners might have told him or Dr. Almasi. The court also finds it curious that Dr. Jariwala provided transcriptions of Dr. Almasi's notes. Further, given that Dr. Jariwala supplemented Eva's medical records to include a notation that "informed consent" was given for Eva's MMR vaccination, Dr. Jariwala clearly is assuming a defensive posture in his transcribed notes.

Upon review of the pediatricians' records and the submitted transcriptions, the court questions whether the pediatricians took the time to adequately examine Eva and to accurately record in their notes everything they spoke about with petitioners.³³ Thus, the court doubts that Dr. Almasi would have recorded Ms. Baglio's mention of petechiae during one of the visits in November or December 2000. Given the factual backdrop of this case, the court is guided by Murphy's caution that "the absence of a reference to a condition or circumstance is much less significant than a reference which negates the existence of the condition or circumstance." 23 Cl. Ct. at 733.

Because there are gaps and inconsistencies in the medical records, the parents' testimony provided essential background facts concerning the first manifestation of symptoms. Indeed, it is very clear that, as Murphy confirms, Eva's medical records contain only "a fraction" of what occurred. Therefore, the fact that the medical records do not mention the events surrounding the

³³ Vaccine Rule 8(c) requires the special master to "consider all relevant, reliable evidence, governed by principles of fundamental fairness to both parties." The reliability of the records of Dr. Jariwala and Dr. Almasi is questionable at best.

onset of fever during the family's outing to Great Adventure or the pronounced Labor Day bruising episode does not preclude the special master's accepting of Ms. Baglio's testimony as accurate.

3. Failure to Report Bruising and Petechiae

The next question is why Ms. Baglio did not otherwise mention the bruising and petechiae to Dr. Almasi or Dr. Jariwala. Ms. Baglio believed Eva merely had rashy skin, and when she applied cream to the affected areas, the petechiae appeared to improve. And again, Ms. Baglio believed Eva to be an easy bruiser, which became more apparent because Eva was getting older and more active. It is also worth noting that aside from a couple of incidents of ear-pulling, Eva was apparently otherwise healthy. In addition, the photographs of Eva, along with Ms. Baglio's testimony, demonstrated that Eva's appearance fluctuates with changes in platelet counts, appearing almost normal when her counts are high and presenting with petechiae and bruises when her platelet counts are low. Thus, the court finds Ms. Baglio's explanations for not consistently mentioning the petechiae or bruising to Eva's pediatricians to be credible. Furthermore, the court finds Ms. Baglio's fear that she would be blamed for abusing her daughter if Eva's pediatricians saw the bruising to be especially credible.

4. Failure to Identify MMR Vaccine as the Cause of Eva's ITP

Another issue that needs to be addressed is why petitioners did not immediately implicate the MMR vaccination or report the symptoms from August and September 2000 to the physicians at St. Joseph's when Eva was first admitted. The court believes Ms. Baglio's explanation that her initial responses to the physicians' questions were affected by the fact that the first few hours at St. Joseph's were "a blur." Eva's emergent hospitalization understandably was frightening for Ms. Baglio and although she tried to give the most complete and accurate medical history, she was shaken by the surrounding events; she was bombarded with questions from numerous physicians in a short period of time. Then, once Ms. Baglio was told that Eva had ITP and that ITP was typically caused by viral infection, she focused her answers on when Eva may have had recent viral infections. Due to her emotional state at the hospital, it is easy to see how Ms. Baglio might not have been thinking about the petechiae and bruising she had observed about seven months earlier.

5. Effects of Independent Research

The court also must address the implication that Ms. Baglio began to attribute Eva's ITP to the MMR vaccination only after doing individual research on the issue, and as result, began to tailor the facts surrounding Eva's illness to mesh with a vaccine injury. First, Ms. Baglio testified that she first realized that Eva's ITP could be related to the MMR vaccination "[w]ithin

the first couple days of diagnosis.”³⁴ She explained that once Eva was diagnosed with ITP, she began to backtrack in her mind when she began to notice Eva’s symptoms, especially remembering the October 2000 birthday party. The court finds this testimony credible.

Second, the court believes that petitioners first learned of the possible causal connection between the MMR vaccine and ITP at the May 8, 2001 visit with Dr. Fein Levy. Even though the conversation is not reflected in Dr. Fein Levy’s medical records, the court believes the conversation did take place when Ms. Baglio says it did. Dr. Fein Levy does not mention the MMR vaccination in her May 1, 2001 letter to Dr. Jariwala. However, Ms. Baglio must have been told about the possibility that the MMR vaccination could cause ITP because she told Dr. Gerson in May 2001 that the onset of Eva’s symptoms began one month after Eva’s MMR vaccination.

Third, shortly after her May 8, 2001 conversation with Dr. Fein Levy, Ms. Baglio began to relate to Eva’s physicians an onset date closely following Eva’s MMR vaccination, beginning with Dr. Gerson in May 2001. The individual research mentioned by petitioners included the literature provided by the physicians at St. Joseph’s (which purportedly did not mention the MMR vaccine), a few undated visits to Barnes and Noble, and Internet research that began when petitioners got a computer in September 2001.³⁵ The only individual research mentioned by

³⁴ In fact, there is no evidence in the record that prior to Eva’s diagnosis with ITP, Ms. Baglio believed that the MMR vaccine was the cause of Eva’s bruising and petechiae. Indeed, petitioners permitted Eva to have DTaP and IPV vaccinations on December 4, 2000.

³⁵ The court notes that Mr. Baglio testified that Ms. Baglio got Internet access within a couple months of Eva’s diagnosis. However, at the points where the testimony of petitioners diverge from each other, the court tends to believe Ms. Baglio’s description of events as her recollection of events seemed clearer than those of her husband.

As an example, Mr. Baglio recalled that his wife mentioned the MMR vaccination to Dr. Fein Levy on the day Eva was diagnosed with ITP. Yet, in Dr. Fein Levy’s May 1, 2001 letter to Dr. Jariwala, she does not make any mention of Eva’s MMR vaccination. The court believes that if the MMR was discussed with petitioners at Eva’s initial visit to St. Joseph’s, Dr. Fein Levy would have shared this fact with Dr. Jariwala. Thus, the court believes that Ms. Baglio’s recollection that she first raised the MMR vaccination as the possible cause of Eva’s ITP to Dr. Fein Levy on May 8, 2001.

Further, the medical records, combined with Ms. Baglio’s testimony, support Ms. Baglio’s assertion that she got Internet access in September 2001. Dr. Palevsky recommended herbs for Eva on May 31, 2001, and these herbs are mentioned by Dr. Fein Levy in her August 1, 2001 record. In September 2001, Ms. Baglio discovered Dr. Bah, an herbalist, on the Internet. Dr. Menell noted on September 19, 2001, that Ms. Baglio wanted “to try herbal remedies first” before starting Eva on Imuran. Dr. Menell’s record reflects Ms. Baglio’s Internet discovery of

petitioners that could have been done by Ms. Baglio between the visits with Dr. Fein Levy and Dr. Gerson would be the visits to the bookstore. However, there is no evidence indicating when these visits took place. The court does not believe that Ms. Baglio “rewrote history” to find a way to tie Eva’s ITP to the MMR vaccination.

In sum, the court believes Ms. Baglio to be a diligent caretaker of her children. She deliberately kept her children away from situations that could result in them catching an illness. She was a stay-at-home mother who spent her entire day playing with and watching her children. The court believes that if Eva had experienced bruising and/or petechiae prior to her MMR vaccination, Ms. Baglio would have noticed. And for the same reasons, the court believes that Ms. Baglio’s recollection of Eva’s bruising and petechiae must be credited.

CONCLUSION

The court finds petitioners’ explanations for the gaps, discrepancies, and contradictions in the medical records regarding the date of onset of Eva’s symptoms, as embodied in their petition, the supporting affidavits, and accompanying testimony, to be reasonable and credible. It is apparent to the court that there is a preponderance of the evidence that:

1. Eva experienced a fever during a trip to Great Adventure on August 20, 2000.
2. Eva experienced a significant bruise during Labor Day weekend in 2000, with Labor Day occurring on September 4, 2000.
3. Eva first exhibited petichiae during Labor Day weekend in 2000.

Accordingly, the court finds that the onset of Eva’s symptoms occurred between nine and fifteen days after her MMR vaccination on August 11, 2000. The court makes no findings with respect to any “factor unrelated” that respondent might raise pursuant to 42 U.S.C. § 300aa-13(a)(1)(B).

Petitioner’s counsel shall confer with respondent’s counsel and then contact the court to schedule a status conference to discuss further action in this case

IT IS SO ORDERED.

Margaret M. Sweeney
Special Master

Dr. Bah in September 2001.